UNPUBLISHED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION

SHARON L. WOMACK, Plaintiff, vs. JO ANNE B. BARNHART, Commissioner of Social Security, Defendant.	No. C04-3009-MWB **REPORT AND RECOMMENDATION**

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I. INTRODUCTION

The plaintiff Sharon L. Womack ("Womack") appeals a decision by an administrative law judge ("ALJ") denying her applications for Title II disability insurance ("DI") and Title XVI supplemental security income ("SSI") benefits. Womack claims the ALJ erred in assessing her residual functional capacity, and in failing to conduct an adequate credibility analysis. (*See* Doc. Nos. 8 & 10)

II. PROCEDURAL AND FACTUAL BACKGROUND

A. Procedural Background

On September 7, 2001, Womack filed applications for DI and SSI benefits, alleging a disability onset date of February 4, 2000. (R. 42-44, 222-26). Womack initially alleged she was disabled due to pain in her lower back, foot, ankle, and knee; irregular heart beat; obesity; fallen arches; and some shoulder and neck pain. She claimed these conditions prevented her from standing for more than ten to fifteen minutes at a time without discomfort and right leg and foot numbness, and she had problems climbing stairs. (*See* R. 68) Her applications were denied initially on January 14, 2002. (R. 28, 30-33, 227). Womack filed a request for reconsideration in which she indicated her condition had "declined somewhat" (R. 34), and she claimed she was suffering back and neck spasms that immobilized her completely for a few minutes at a time. (R. 97) Her applications were denied upon reconsideration on June 20, 2002. (R. 29, 36-40, 228)

On August 20, 2002, Womack requested a hearing, stating, "The condition of lower back pain and ankle pain continues to get more intense and I can't do activities I used to do and enjoy. I can't stand for more than 5 min. - walk long distances or sit for long periods of time without discomfort." (R. 41) A hearing was held before ALJ Jean M. Ingrassia on March 20, 2003, in West Des Moines, Iowa. (R. 229-64) Womack was

represented at the hearing by attorney Blake Parker. Womack testified at the hearing, as did Vocational Expert ("VE") Roger Marquardt.

On September 25, 2003, the ALJ ruled Womack was not entitled to benefits. (R. 11-20) Womack appealed the ALJ's ruling, and on November 26, 2003, the Appeals Council of the Social Security Administration denied Womack's request for review (R. 5-7), making the ALJ's decision the final decision of the Commissioner.

Womack filed a timely Complaint in this court on January 28, 2004, seeking judicial review of the ALJ's ruling. (Doc. No. 1) In accordance with Administrative Order #1447, dated September 20, 1999, this matter was referred to the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B), for the filing of a report and recommended disposition of Womack's claim. Womack filed a brief supporting her claim on July 8, 2004. (Doc. No. 8) The Commissioner filed a responsive brief on August 24, 2004 (Doc. No. 9), and Womack filed a reply brief on September 3, 2004 (Doc. No. 10).

The matter is now fully submitted, and pursuant to 42 U.S.C. § 405(g), the court turns to a review of Womack's claim for benefits.

B. Factual Background

1. Introductory facts and Womack's testimony

At the time of the hearing, Womack was 59 years old. She was living in Webster City, Iowa, where she had lived for over thirty-five years. She was 5'4½" tall and weighed about 308 pounds. She noted she had gained about fifty pounds since she filed her applications for benefits, which she attributed to her reduced activity level as a result of her pain. (R. 233-34) Womack stated she was single, and she had four grown children and six grandchildren, all of whom were actively involved in her life. (R. 234) Womack

had a driver's license and had driven herself to the hearing. She stated she had no problems driving. (*Id.*)

Womack stated she has a two-year Associate's Degree in general education, which she completed in 1991. She testified she has no problems reading, writing, or doing general mathematics. (R 235-36)

At the time of the hearing, Womack was working as a part-time companion to a 97-year-old lady. She started the job in September 2002, about six months prior to the ALJ hearing. She heated up meals that were delivered by Meals on Wheels, and she washed her client's back when the client took a bath. She stated her client was able to transfer herself from her wheelchair to the bath or toilet and needed very little assistance, but the client's family wanted her to have someone with her regularly. Womack stayed with the client at the client's apartment in Webster City. She worked only on weekends, for two to two-and-a-half hours in the morning and then another three hours in the evening. She usually arrived between 8:30 and 8:45 a.m.; stayed until 10:30 to 11:15, depending on when Meals on Wheels delivered lunch; and then returned around 5:30 p.m. and stayed until around 9:00 p.m. According to Womack, someone else stayed with the client during the week. (R. 236-37)

From February 2000 to September 2002, Womack was a home attendant for different individuals in various locations. She stated all of the jobs were performed in basically the same fashion. She assisted clients in getting to and from the bathroom, fixed light meals for them, made sure they took their medications at the appropriate times, monitored their vital signs as needed, kept them company, and assisted them in other ways that were needed. For example, one client had difficulty swallowing, so she had to swab out his mouth occasionally. (R. 238-39; *see* R. 77, 142) She stayed with one client, a young man with Lou Gehrig's Disease, for several months, until his family decided he no

longer could be cared for adequately in a home setting. She worked for him from about 9:00 a.m. until about 2:30 p.m., two or three days a week, and she was paid $8.00 per hour. (R. 237-38, 248)

Womack indicated that in her home health care jobs, the would be sitting more than standing and walking. She never had to lift more than twenty pounds. The only lifting she did was in preparing meals, which never required her to lift over ten pounds. (R. 256-57)

From March 1999 until February 2000, Womack worked at Friendship Haven, where she received certification as an activity director. She directed activities there and also worked as volunteer supervisor. (R. 142, 235, 239) On February 4, 2000, Womack lost her job at Friendship Haven. She did not know why her position was terminated. She stated she sought other work but was not able to find another job. Her back was getting worse, and according to Womack, although she was well-qualified, prospective employers could tell during her interviews that she was not getting around well. She stated someone at the Social Services office in Webster City recommended she apply for disability benefits. (R. 239)

Prior to Friendship Haven, Womack worked full-time "[o]ff and on from '95 through 1999," providing home care for an elderly man in Webster City. (R. 142, 239) She transported him to and from activities and appointments, administered his medications, fixed his meals, and provided other home care services for him. (R. 142)

From March 1996 until July 1997, she was director and coordinator for the Hamilton County Compeer Program, "working with individuals with mental disabilities." (R. 240; *see* R. 142) She did some public speaking; assisted in grant writing; recruited, trained, and supervised volunteers; and prepared progress reports. (R. 142)

From March 1995 until February 1996, she received some on-the-job training and worked at Victorian Acres, where she assisted adults "with severe brain injuries,"

accompanying them "in everything they did through their programming through the day, whether it be physical therapy type things or mental and cognitive therapies." (R. 235, 240; *see* R. 143)

From February 1994 to February 1995, she worked as a residential counselor at Beloit Children's Home, where she supervised youth, transported them to and from school and medical appointments, and did some cooking, cleaning and laundry. (R. 143)

From March 1993 until February 1994, Womack worked at Country Meadows, assisting mentally-challenged individuals with daily living skills, transportation, shopping, and the like. (R. 143, 240-41) While at Country Meadows, Womack received a "Med Manager certification." (R. 235)

At some point in time, Womack apparently worked briefly as a receptionist for Your, Incorporated. She answered and transferred phone calls, and did some typing and general secretarial work. (R. 241)

She worked as an administrative assistant at a college library from 1989 to 1991, and as an assistant librarian at a community service agency from December 1991 to August 1992. The VE classified those jobs as clerical work or office clerk. (R. 259)

From July 1976 until May 1991, Womack was self-employed as a hairdresser at the Family Hair Care Center/Mary & Co. in Webster City, Iowa. (R. 143) She stated she quit doing hair because she began having problems with her feet, ankles, and back. She experienced "[s]evere foot and ankle pain," and her "arches were starting to fall." (R. 241) As a result, she had problems going up and down stairs and walking long distances. In addition, she fell twice within a short period of time and injured her back, and she stated although it got somewhat better for awhile, it then began "getting worse all the time." (R. 241-42) She suggested one of the falls could have been related to her unsteadiness due to her foot and ankle problems. She tripped on a raised sidewalk and fell

forward into a door, bending her body "in an L-shape backwards." (R. 242) She stated that was the beginning of her low back pain. (*Id.*)

Womack filled out a daily activities questionnaire in April 2002. (*See* R. 91-96) At that time, she was able to shower, dress, and take care of her hair. She noted she only showered two to three times per week instead of daily, as she had before the onset of her disability, because the shower was upstairs and she sometimes had difficulty climbing stairs. She noted she would sit on a chair in front of a mirror to do her hair. (R. 91) She indicated she slept from 11:00 p.m. until 7:30 or 8:00 a.m., but she used to be able to get up at 6:00 a.m. She stated she sometimes had trouble falling asleep due to pain in her back and/or ankles and feet, but once she fell asleep, she could sleep through the night. (*Id.*) She noted that since her condition began, she regularly did her few dishes, took out the trash, and drove her car through an automatic carwash. She hired someone else to mow her lawn, rake leaves, do snow removal, and help with other chores. (R. 91-92) She prepared her own meals, but indicated she often had to sit down while the food was cooking, and she usually prepared simple meals that did not require standing at the stove for very long. She did her own grocery shopping a couple of times per week, and made short, quick trips to do other shopping. She occasionally would go shopping for two or three hours. (R. 93)

Womack stated she drove a car with a standard transmission, and she sometimes had pain in her lower back when she pushed in the clutch. She ran her own errands to pay bills, go to appointments, and attend social meetings and church activities. (R. 93) Although she took some medications, she indicated she did not like to take pain medications, and she had not noticed any problematic side effects from her medications. (*Id.*)

She enjoyed hobbies including sewing, knitting, counted cross-stitch, reading, crafts, silk flower arranging, and drawing or painting on bricks and egg shells. She watched various types of televisions programs, and had no problems understanding or remembering what she watched. She read daily, including magazines, books, newspapers, devotional materials, project patterns, and recipes, and had no problems understanding and remembering what she read. She had no difficulty going out in public, and she went out to visit friends and relatives, and attended church and social gatherings. She participated on a church worship team, attended her grandchildren's activities, and talked on the phone to family and friends. She indicated she engaged in some type of social activity daily, and she had no problems getting along with others. According to Womack, she could "get along and communicate appropriately with supervisors and coworkers." (R. 94) She had occasional problems with forgetfulness if she was stressed, but she made lists to remind herself of appointments and the like. She indicated she usually handled stress "pretty well." (R. 95)

Womack stated she sometimes had trouble getting up on a chair or step-stool to change a lightbulb, and taking the trash bag out of the compactor. (R. 95)

In commenting on factors she felt affected her ability to work, Womack stated the following:

> When standing my lower back becomes stressed and outside of right leg gets a tingling sensation and numbness and foot may go to sleep. As soon as I sit down for a few minutes it goes away. This starts after about 10 minutes of standing. When I go from sitting to standing[,] knees/ankles/arches crack and pop. Often have to just stand for a few seconds before starting to walk and completely straighten my back. After I take a few steps I start navigating better.

(R. 95-96)

At the ALJ hearing, Womack described how her condition had changed in the year since she completed the daily activities questionnaire. She stated her condition had continued to deteriorate. She felt "less able to stand for periods of time," and she had to shift her weight occasionally while she was sitting in order to get comfortable. (R. 242) To rise from a sitting position, she had to stretch her legs out a bit first, and she complained of difficulty rising from a chair and getting in and out of the car. She stated she could not go up and down steps unless there was a railing to use for support. (R. 242-43)

Womack also completed a Personal Pain/Fatigue Questionnaire, dated October 11, 2001. At that time, she was experiencing a dull aching pain in her lower back that increased with daily activities. She had pain in her ankles and feet that felt "like a tight rubber band with sharp stabs like [a] knife being stabbed through," and she sometimes had the "sensation of electric impulses [sic] in [her] right foot," and a "[t]ingling/numb sensation." (R. 85) She had pain in her upper right leg when she stood for more than eight or ten minutes. She experienced daily achiness in her shoulder and upper arm that appeared to correspond to her back pain as the day progressed. Depending on her level of activity, she also might have back, leg, and ankle stiffness after sitting, but the stiffness would resolve when she got up and moved around. (R. 86)

Womack stated she experienced pain every day, with the amount of pain depending on her activities during the day. Sitting down would relieve her pain but it would return when she stood or walked. Her pain and fatigue were worse in the afternoon and evening. At that time, she indicated her pain and fatigue had worsened over the preceding twelve months. (R. 85, 97)

In October 2001, Womack was taking Aleve, Tylenol, Tylenol #3, and Aspirin. She took these medications on a periodic basis, and did not take all of them every day.

She indicated the medications she took depended on each day's activities. She indicated she also periodically obtained temporary relief from chiropractic treatments, pain creams, cold packs, and heat packs. She expressed a desire to return to full-time work. (R. 87)

Womack stated she had stopped or restricted the following activities because of pain or fatigue: jobs that require standing for long periods of time, walking long distances, dancing, lifting and carrying her grandchildren, carrying packages that are heavy or awkward, moving furniture when cleaning, going up and down stairs, doing her own lawn care, and getting down on the floor or up on a ladder. (*Id.*) She stated she could not stand for very long without discomfort, and she could no longer do things she used to enjoy like shopping, dancing, and mingling at social events. (*Id.*)

Womack indicated she sometimes could not get to sleep because of foot spasms or pain, and she would have trouble getting up in the morning if she had been unable to sleep well the night before. She noted she sometimes could not make it upstairs to take a shower, and she stated, "There are days I just don't care if I go or do anything." (R. 88)

Womack opined she could lift an average of ten pounds or less. She occasionally had trouble lifting her right arm over her head. She complained of problems stooping, crouching down, and getting on her hands and knees, and noted her shoulders bothered her when she tried to reach things above her head or on the floor. (*Id.*) She stated she could only stand for ten minutes to a half hour and then would have to sit for a short time, after which she could have problems getting back up. (R. 88-89)

Womack described her typical day as follows:

> Listen to morning news. Get up - eat breakfast - get dressed. Watch TV and read paper. Look especially at job ads. Apply for jobs not requiring standing/lifting/carrying heavy objects. Prepare meals for myself. A lot of sitting but keep busy with various projects and activities. Do some walking everyday but

> not long walks. Pick up house/do dishes once a day and vacuum once a week in downstairs[,] only occasionally upstairs. Use car daily to go do various activities. Usually just short trips around town or local area. Driving doesn't bother on long trips if I get out and walk/stretch about every hour. Getting out of car is sometimes difficult, after I'm out [I] stretch and walk [and] it's better. Most evenings watch TV, read, work on projects, have a church meeting or class or worship team practice. Have a stool to sit on so my back doesn't get as stressed and painful. Try to maintain a degree of activity so I'm not just sitting doing nothing.

(R. 89-90)

At the ALJ hearing, Womack described how her pain and fatigue had changed since she completed the questionnaire. She stated she was taking pain medication every morning when she got up. Whereas before she only took medication when she needed it, she now was taking medication immediately upon arising because she knew she would "need it later in the day." (R. 243) She had a prescription for Vioxx, but she stated Aleve or Tylenol helped just as much or more. She stated Renald Bernard, M.D. was her current physician, but she did not see him as often as she should because she had no insurance and could not afford to see a doctor. (*Id.*) Before Dr. Bernard, Womack saw Dr. Eugene Brown for many years, until he retired. (R. 244)

She saw Dr. Solacker for her foot and ankle problems. She stated he had given her a cushioned arch support, but because she did not have insurance, he had not given her any additional treatment. (*Id.*)

Womack stated she was seeing Dr. Tindale, a chiropractor, about once a month. He adjusted her back, ankles, and knees. She indicated she usually felt better for a few days after an adjustment, but then as time went on, her condition worsened again. (*Id.*)

Womack stated she saw a doctor in Iowa City, Dr. Stoltzman, for her ankle problems. According to Womack, the doctor told her there is a surgical procedure that could help her but she would have to be non-weight-bearing on her right foot for at least three months, and Womack did not believe that was feasible for her. She stated she would be unable to get around, even within her home, without putting some weight on her foot. (R. 245)

Womack described how her pain affected her currently, as follows:

> It prevents me from taking part in a lot of activities that I used to enjoy. I used to like dancing and going for walks. Now if I go to a dance, I sit and watch everybody else and visit with people, which is still, you know, good for the socialization but I'd rather be dancing. And I'd like to go for walks just for the emotional help it gives me, plus it'd help me to lose some weight.

(*Id.*)

She also described how her pain prevented her from working, as follows:

> I can't lift. Sitting for long periods of times and I have trouble when rising and moving and often times get very uncomfortable sitting in about any kind of chair. And literally have to go lay down for awhile to relieve the pain.

(*Id.*) She explained that during the time between her morning and evening hours at her part-time job, she went home to lay down and rest to relieve pain in her back and ankles. (R. 245-46) She stated that even the short hours she was working sometimes caused her a lot of pain, and often it would take her a day-and-a-half to recover from working before she could go grocery shopping. (R. 246)

On the days she didn't work, Womack enjoyed counted cross-stitch, and she watched TV, read, and made figures. She stated she had many hobbies and interests and she liked to keep busy; she did not like to just sit around. Sometimes she visited her

mother in Iowa Falls. Womack stated she usually gets up around 9:00 a.m. For the most part, she is able to fix her own meals and care for herself, but she keeps "a few TV dinners on hand" for times when her back condition prevents her from cooking. No one assists her with her daily living requirements, but occasionally she can call a neighbor's grandchildren to help her carry heavy grocery bags. (R. 246-47)

Womack stated she usually sleeps well at night. She takes amitriptyline as a sleep aid and sometimes lays on a heating pad for awhile before going to sleep. She elevates her feet on a pillow, even when she is laying on her side, and she sleeps with a pillow between her knees to relieve the stress on her back. (R. 247)

Womack stated she gets paid $8.00 per hour for her part-time job as a home health aide, which amounts to $80 to $100 per week. She does not work through an agency; she works as an independent contractor. She has no other source of income, indicating family members have helped her out with some of her bills. (R. 247-48, 250)

In response to the ALJ's questioning, Womack indicated she has some degeneration in her lumbar spine, as well as some arthritis. She stated her doctor had not done tests to determine whether she had a herniated disc or nerve impingement, but she had some back and ankle X-rays in Iowa City in December 2002. She had an appointment scheduled in Iowa City for the week after the hearing to get an orthotic insert. (R. 252) Womack explained that her ankle "tilts in, which causes it to pinch a nerve on the . . . outer part of [her] ankle," and she has arthritis in her ankle and toes. (R. 253) The problem affects her ability to walk and balance. (*Id.*)

Womack stated she has lived alone since 1990. She does not have anyone come in and help her with cleaning because she cannot afford to pay someone. She explained that if she does not feel like doing housework that needs to be done, "it just doesn't get done."

(*Id.*) She can vacuum if she takes rest periods during the task. For example, she stated she sometimes divides her living room into thirds to get it all vacuumed. (*Id.*)

Womack stated that although DDS had sent her for a mental evaluation, she was not claiming disability due to any mental problems. She speculated that DDS had obtained the evaluation because she may have mentioned feeling depressed at some point. (R. 254)

b. Womack's medical history

The record indicates Womack saw Renald Bernard, M.D. on March 2, 1999, with multiple complaints. She wanted to lose some weight. She had a history of back pain which had worsened recently. She felt fatigued, and her skin was dry. The doctor noted Womack was "really overweight," and her blood pressure was elevated slightly. He noted she had back pain at both sacroiliac joints and L4-L5, L5-S1. She also had sinusitis. Dr. Bernard instructed Womack to change her eating habits and get some exercise, and she agreed. After a normal thyroid test, he prescribed a trial of Adipex for short-term weight loss assistance. He also prescribed the antibiotic Omnicef for her sinusitis. (R. 183)

When Womack returned for follow-up on April 27, 1999, she had lost eleven pounds. She reported exercising, watching her diet, and taking her medication. Her blood pressure was still slightly elevated. The doctor prescribed five more weeks of Adipex. (*Id.*)

Womack returned for follow-up on June 15, 1999. She indicated she had lost only one pound and she had not taken her medication for the previous two weeks because she had not been feeling well. She described some difficulty walking due to balance problems, and noted that when she stood up and started to walk, she had to watch her first step because she was unsteady. She had no headache, light-headedness, or numbness or tingling of her extremities, but she complained of chronic back problems. Womack was

concerned because she had a friend with similar symptoms who was diagnosed with multiple sclerosis. Dr. Barnard opined her balance problem probably was related to her long-standing back problem. Womack reported seeing a chiropractor and a massage therapist which had helped some, and Dr. Bernard recommended she see a massage therapist for her back. He saw no indications for a neurological consult. He prescribed one month of Xenical, another anti-obesity medication. (R. 182)

Womack saw Dr. Bernard again on July 12, 1999. She had done well on the Xenical and had lost five pounds. The doctor did not note any complaints relating to the balance problem, and Womack denied untoward side effects from the mediation. (*Id.*) At her next follow-up on August 23, 1999, Womack had lost twelve pounds. She indicated she was still doing some exercises and she was "quite active at work." (R. 181) The doctor renewed her medication for another six weeks. (*Id.*)

Womack presented for an annual gynecological examination on September 27, 1999. At that time, she reported she was still losing weight and taking the Xenical. She had lost two pounds since her last visit. (R. 180) Her next follow-up was on December 16, 1999, when Womack reported she was still losing weight slowly and she remained motivated. (*Id.*)

Womack saw Dr. Bernard on February 10, 2000, complaining of feeling "down and depressed." (R. 179) She stated she had been fired from her job recently, "and since that time cannot function." (*Id.*) She was having some insomnia. She reported a similar reaction in the past, at the time of her divorce, and stated she had taken Amitriptyline at that time with good result. The doctor prescribed Amitriptyline 25 mg. two hours before bedtime. (*Id.*)

Dr. Bernard saw Womack for her annual gynecological examination on October 10, 2000. Her pulse was irregular, and Womack was instructed to monitor her pulse rate for

one week and call back with the results. She called on October 16, 2000, and reported her pulse rate was still irregular. On October 19, 2000, the doctor informed her to come in immediately if she developed any cardiac symptoms such as chest pain or shortness of breath. At a recheck on November 22, 2000, Womack's pulse was still irregular. (R. 178)

Womack saw Dr. Bernard on November 27, 2000, with complaints of severe low back pain. He noted she had a history of back injury in 1996. Her pulse was still irregular. Womack reported that she had to turn down two job offers because at the time she applied, she told the prospective employers she had to restrict her activities due to her back problems. She stated the employer did not want an employee with physical restrictions. Womack had gained four pounds since her last appointment. She had "severe [back] pain radiating to both buttocks but mainly on the right side," with no radiation of pain below her knees. Her range of motion was painful and limited on flexion, extension, and lateral motion. Dr. Bernard suggested an EKG due to Womack's irregular heartbeat. She stated she could not afford the test, but he warned her that she could develop some complications, and he encouraged her to have an EKG as soon as she could afford it. He encouraged her to take one aspirin a day to prevent atrial fibrillation, which can lead to stroke. For her back pain, he prescribed Celebrex 200 mg. twice a day for two days, then once daily for seven days. He also told her to use heat, and to do "some light exercise regularly to try to reinforce her lumbar musculature." (R. 177)

Womack saw Michael E. Tindall, D.C. on February 13, 2001, complaining of pain and tightness in her lower back and sacroiliac area on the right; pain and tightness in the upper thoracic area; and pain and stiffness in her lower neck on the left. The doctor's notes suggest he had seen Womack before because he indicates both her complaints and his findings were unchanged. His diagnoses were lumbar subluxation, thoracic

subluxation, cervical subluxation, and thoracic arthralgia/dorsalgia. (R. 161-62) He performed adjustive procedures, vibromassage, intersegmental traction, and hydroculation, and noted she "continue[d] to receive relief from palliative management." (R. 161) He instructed her to return as needed. (*Id.*)

Womack saw Dr. Tindall again on March 24, 2001. He noted all of her complaints were moderately improved, and Womack reported her range of motion in her back and neck also had improved. He performed adjustive procedures, vibromassage, and hydroculation. (R. 159-60)

Womack returned on April 20, 2001, complaining that her back and neck were slightly worse. She stated her back had been worse since the preceding day, when she attended a job fair where she "stood and talked to people and walked on cement all day long." (R. 159) She indicated she was going on a trip the next week and needed a treatment before she traveled. Dr. Tindall performed adjustive procedures, vibromassage, intersegmental traction, and hydroculation. He told her to return as needed. (R. 157-59)

Womack saw Dr. Tindall again on September 14, 2001. She stated her low back had been bothering her for some time, but she had "put off coming in for treatment." (R. 157) She complained of sharp pains in both of her feet, worse on the right, and intermittent "shooting pain all the way to [her] toes" when standing. (*Id.*) Objective examination revealed mildly taut and tender muscle fibers in the C1-C2 area bilaterally; mild tenderness, stiffness, and soreness at T3-T4 and T4-T5 bilaterally; and pain on motion palpation at L4-L5 bilaterally. Dr. Tindall performed adjustive procedures, vibromassage, hyroculation, and intersegmental traction. (R. 156-57)

On October 25, 2001, Dr. Tindall apparently examined Womack, and he prepared a written report regarding her history and his treatment of her. His report included the following observations, among others:

Impressions: Examinations of the ankle indicate chronic manifestations of a sprain/strain injury to both ankles and arch[e]s of [Womack's] feet. The patient exhibits manifestations of a chronic pain and loss of mobility to the lumbo-sacral spine. This has been progressive over the past ten years.

. . .

Restriction Data: The patient can use the left hand and the right hand. The patient cannot use the left foot for foot controls and the right foot for foot controls. The patient is restricted from a cold environment. The patient is restricted from unprotected heights, moving machinery, marked changes in temperature, and exposure to dust, fumes, and gases. The patient is not restricted . . . for simple grasping, for firm grasping, and for fine manipulation. The patient may use driving automotive equipment. These restrict[ion]s are permanent.

Disability Data: In an 8 hour day with usual rest periods this patient should be able to lift very little. I would not expect [t]his patient to be in any type of job where lifting is involved. In a normal work period of 8 hours (with the usual breaks) this patient should be able to carry very little weight. She is unable to tolerate her own weight when walking for any distance. Bending at the waist is not allowed. Twisting sometimes complicates musculoskeletal balance. This patient should never do a job that involves any twisting movements. This patient is not physically able to squat. This patient is not allowed to participate in work tasks that involve[] repetitive motion. This patient may walk occasionally (up to 33% of the task time). This patient may stand occasionally (up to 33% of the task time). This patient may alternately sit and stand frequently (up to 66% of the task time). The patient cannot be allowed to work at shoulder level or above.

Additional comments: [Womack] has a long history, over ten years, of chronic lower back pain that I have provided care for. Her main cause is her weight. She is way too heavy for

> her body height. She has chronic feet and ankle pain that I haven't treated her for but am also aware of this problem. [Her] physical condition would not be classified as very good in my opinion. The past two years she has not responded as quickly and as favorably as she has in the prior years of treatment.

(R. 153-55)

At Womack's annual gynecological exam on October 30, 2001, Dr. Bernard recommended Womack lose "5-10% of her weight" to normalize her blood pressure. (R. 175)

On October 31, 2001, Womack was examined by Joseph X. Latella, D.O. at the request of Disability Determination Services. Her blood pressure showed moderate hypertension at 176/90, and her pulse was 82. She reported a history of low back pain starting in 1995, as a result of a fall at work. Among other things, the doctor noted the following from his examination of Womack:

> The last back x-rays were done in 1995. The back pain starts over L4-5 and S-1. She stated she did not get any more x-rays or treatment for her back these past 6 years . . . due to money. She does use a cane to walk as her stability is compromised due to limp on the left side. She does no[t] use a crutch or walker. . . . We did look at her arches and they are flat to the floor. She stated they started to fall some two years ago. She stated that there is pain in the lumbar spine around L-4-5, with "numbness down her right leg". She stated that she cannot walk or stand more than 10 minutes due to the paresthesias. SLR was negative as was the Patrick Febrae sign bilaterally.
>
> She does have a noticeable limp and we watched her walk into and out of the clinic areas, and this was very real. She does need the cane for stability. . . . Please note the side bending of the lumbar spine was limited to 15 degrees. She cannot squat, climb, crawl or bend, as her knees will not support any

> effort of exertion. Hip forward flexion was limited by 10 degrees, due to the obesity of the lower extremities. Adduction and abduction were normal. The ankle motion was also normal. The knee forward flexion was limited due to the adipose tissue built up behind the popliteal spaces.
>
> She can transfer objects with either hand. She can drive and ride in a car, but can only sit for short periods of time, due to the pain in her back. She will have problems with dust and pollen environment.

(R. 142-43)

A back X-ray taken on November 15, 2001, showed some degenerative changes in Womack's lower lumbar spine, with intervertebral disc space narrowing at L5/S1 and L6/S1, and apophyseal spondylosis at L5/L6. (R. 152)

On December 17, 2001, J.D. Wilson, M.D. completed a residual functional capacity assessment of Womack. He found Womack to have medically-determinable, severe impairments of degenerative joint disease of the lumbosacral spine, bilateral Pes Planus, hypertension, and Level III obesity. He further found none of her impairments met the Listing requirements. (R. 163) The doctor noted Womack's physical problems would be affected significantly by her obesity. He found her subjective allegations not to be supported completely by the medical evidence, "with some inconsistencies and some appearance of overstatement of limitations." (R. 163) For example, he noted Womack had complained of trouble raising her arms overhead, but Dr. Latella's examination revealed no loss of range of motion of her shoulders. (*Id.*)

Dr. Wilson noted there was "some confusion" with Dr. Latella's examination notes on the issue of whether Womack used a cane. When Womack was contacted for clarification, she indicated she did not use a cane, did not need a cane, and no cane had been prescribed for her. However, she stated she had some difficulty standing, and might

hold onto a chair to get her balance. (R. 164) Incorporating this information in his analysis, Dr. Wilson concluded Womack would be able to lift/carry up to twenty pounds occasionally and ten pounds frequently; stand and/or walk for two hours in an eight-hour workday; sit for about six hours in an eight-hour workday, and push/pull without limitation. He found she had poor balance upon arising, and she should never performing activities requiring balancing. She could occasionally climb, stoop, kneel, crouch, and crawl. He found she had no manipulative, visual, or communicative limitations. She should avoid concentrated exposure to extreme cold, hazards, fumes, odors, dusts, gases, and poor ventilation. (R. 164-72) On May 9, 2002, Claude H. Koons, M.D. reviewed Dr. Wilson's assessment and concurred with the latter's conclusions. (R. 172)

Womack saw Dr. Pierre Bernard on February 14 and 15, 2002, and Dr. Renald Bernard on March 7, 2002, in connection with a burning sensation and a salty/sweet taste in her mouth. The doctors suspected an allergic reaction and treated her with Benadryl and a steroid. (R. 174) At her appointment with Dr. Renald Bernard, Womack also complained of "some arthralgia of knees, ankles, back . . . [and of feeling] fatigued, having some problem sleeping, no energy, no motivation, has to push herself." (*Id.*) The doctor suggested she have her electrolytes and thyroid rechecked, but Womack declined because she did not have insurance. The doctor gave her a sample of Zoloft for her depression. (R. 173-74)

On May 31, 2002, William E. Morton, Psy.D. completed a psychological evaluation of Womack at the request of DDS. He found her to have no mental limitations that would affect her ability to work. (R. 191-93) On June 19, 2002, Lon Olsen, Ph.D. completed a Psychiatric Review Technique. (R. 194-205) He also concluded Womack had no mental disability, noting, "The claimant attributes all of her limitations to her physical condition, not her mental condition." (R. 206)

On November 18, 2002, Dr. Renald Bernard completed a questionnaire regarding his opinion of Womack's physical ability to perform work-related activities. (R. 207-10) In the doctor's opinion, Womack would have significant limitations in doing any repetitive reaching (including raising her arms overhead), handling (grasping, turning, or twisting objects), and fingering (fine manipulation), that would completely prohibit those types of activities. He opined she could lift less than ten pounds, both frequently and occasionally; stand and walk for less than two hours in an eight-hour workday; and sit for no more than two hours in an eight-hour workday. She would have to change positions frequently, and she could only sit for ten to fifteen minutes and stand for five to ten minutes before having to change positions. She would have to walk around for about five minutes every thirty to forty-five minutes, and she would need the opportunity to change positions at will. She likely would need to lie down for awhile every two to three hours. Dr. Bernard stated the medical findings that supported these limitations included "flat arch support, [and] lumbar arthritis including ankle." (R. 209)

Dr. Bernard opined Womack could twist, stoop, and bend occasionally, but she should never crouch, climb stairs, or climb ladders. (*Id.*) He could not point to any specific findings to support this opinion other than Womack's subjective complaints of low back pain. (R. 210) He stated she should avoid kneeling and crawling because of her difficulty in getting back up. (*Id.*) He also indicated that from Womack's subjective complaints, he believed her pain frequently was severe enough to interfere with her attention and concentration. He stated Womack was not a malingerer. (R. 208)

Dr. Tindall also completed a questionnaire regarding Womack's condition. (R. 211-12) He noted he had treated Womack for chronic back pain from October 1, 1992, through October 11, 2002. He stated her condition was chronic and had deteriorated, and her prognosis was poor. (R. 211) The doctor stated, "This patient has

chronic progressive low back deteriorating condition that is exacerbated by her weight." (R. 212)

Dr. Tindall opined Womack would have the following work-related abilities: lift less than ten pounds occasionally and frequently; stand and/or walk for less than two hours in an eight-hour workday; must alternate between sitting and standing periodically; and limit the use of her lower extremities. The doctor stated Womack "has a deteriorating lumbar spine. She can't walk very far without resting. Sitting will aggravate this complaint/condition. [Womack] is obese and this [is] the contributing factor in the severity of her condition." (R. 214) He opined Womack could balance and crawl occasionally, but she should never climb, kneel, or crouch. He noted, "X-rays demonstrate deterioration of lumbar spine. Patient has poor AROM in lower back with overweight condition." (*Id.*)

Unlike Dr. Bernard, Dr. Tindall found Womack to have no manipulative limitations at all. He also found she did not have any visual, communicative, or environmental limitations (R. 215-16)

On January 16, 2003, Womack was seen at the University of Iowa Hospitals and Clinics for evaluation of her bilateral ankle pain. (R. 217-20) X-rays showed "severe midfoot arthritis with mild degenerative disease of the ankle . . . [and clear indication of] hindfoot valgus and forefoot abduction." (R. 219) She was diagnosed with flatfoot-acquired, hallux rigidus, and primary osteoarthritis. Doctors found Womack to be "an ideal candidate for a TAL and bilateral triple arthrodesis . . . on both sides." (*Id.*) However, they encouraged her strongly to consider Bariatric surgery, observing that a reduction in her weight "would help her feet as well as her spine and could possibly relieve the stress on both her feet." (*Id.*) Doctors provided Womack with shoe inserts and advised her to return as needed. (*Id.*)

On April 3, 2003, Womack returned to the University of Iowa complaining of "bilateral, severe foot pain." (R. 221) She advised the doctors that "State papers do not help with bariatric surgery," but they encouraged her to submit the request anyway. Their evaluation was "the same as before, with pes planovalgus and subfibular impingement." (*Id.*) Her treatment plan included continued work with orthotics, and she was advised to consider triple arthrodesis surgery. (*Id.*)

c. Vocational expert's testimony

The VE clarified Womack's past relevant work summary in several respects (R. 255-56), and the ALJ then asked the VE the following hypothetical question:

> I'd like you to consider an individual who is 59 years old, who has two years of college, who has work experience as she had set out in Exhibit 3E and as you've set out in Exhibit 20E. This individual can occasionally lift up to 20 pounds and frequently lift up to 10 pounds. She should be able to stand or walk with normal breaks for at least two hours in an eight-hour day, not necessarily all at once. She should be able to sit in an eight-hour day. Push and pull – there would be limitations. She does have problems with balancing because of the problems that she has with her ankle. Consequently, only occasionally climb ladders, ropes, and scaffolds and stairs and ramps, balance, stoop, kneel, crouch, and crawl. No manipulative, visual, communicative, or environmental limitations and no mental limitations which would interfere with her ability to function independently, appropriately, and effectively on a sustained basis. Now with those restrictions, would she be able to do any work activity she has done in the past?

(R. 257-58)

The VE responded that the hypothetical claimant could perform Womack's past work as a companion, "both as normally performed and as she specifically described physically performing the work[.]" (R. 258) She also could do general clerical work, as well as working as a hairstylist, "as normally performed." (*Id.*) The VE stated all of those jobs are in the semi-skilled to skilled category. He described the exertional demands of these jobs as follows:

> The home attendant as normally performed as noted in the past relevant work summary is medium, as she performed it[,] it would be sedentary. The companion is light as recognized, but as she performed it[,] it ranged from light to sedentary, depending upon the patient that she was assisting. The hairstylist as normally performed is classified as light.
>
> . . .
>
> The supervisor volunteer services would fall within the guidelines of the hypothetical, . . . That is classified as light work. And I believe that would be the activity director that falls within that job description and the director of volunteer coordinator would also be volunteer services supervisor. . . . And that is light work as she performed it and also as normally performed and it is skilled.

(R. 258-60)

The VE indicated that although the hairstylist job requires more than two hours of standing in a day, it would allow an individual to take a break after standing for two hours. (R. 259) Assuming the individual would fall once per month as a result of balance problems, the VE did not "see that as being a significant barrier to employment." (R. 262)

Womack's attorney asked the VE the following hypothetical question:

> [P]lease assume the following hypothetical situation. An individual who's 59 years old who has two years of college and work as you have described it on your past relevant work

> history. Occasionally – excuse me. Lifting and carrying of less than ten pounds. Standing and walking of less than two hours in an eight-hour workday. With respect to sitting, the person needs to periodically alternate sitting and standing and that needs to be done at 10 to 15-minute intervals. And with the changing from sitting to standing, there is light dizziness with that change of position. Only limited pushing and pulling as it regards only to lower extremities, not the upper extremities. No climbing of stairs. No kneeling, no crouching, no stooping. Occasional problems with balancing. Severe pains when standing and that pain would be in the low back area, knees, and ankles. The pain increases as the person stands. It increases up to, on a one to ten pain level, it increases up to a number ten that frequently then causes difficulties with concentration. Is – under that hypothetical, would the person be able to do any of the past relevant work?

(R. 260)

The VE replied:

> No, she could not. We're looking basically at two main barriers to employment here. One is if an individual does, in fact, have to alternate body positioning every 10 to 15 minutes and it's obvious that they're not going to be able to stay with the task and perform a task with any type of proficiency. They're just not going to be able to sustain a steady work pace. In addition to that, if we're looking at a scale of one to ten, ten being severe, in fact, pain is – it does get to a level ten, obviously the concentration is going to affect the person to the point that they cannot keep their mind on their job task and the work cannot be performed.

(R. 261) There also would not be any other jobs the person could perform in the economy. (*Id.*)

Looking back at the ALJ's hypothetical, the VE indicated that if the person had to miss work more than three times per month due to her impairments, that would preclude

the performance of any of her past relevant work "competitively over any sustained period of time." (*Id.*) Furthermore, under the ALJ's hypothetical with this added factor, there would be no jobs available that the person could perform. (*Id.*)

The record reflects that Womack changed positions from sitting to standing about forty-five minutes into the hearing. (R. 262)

4. The ALJ's decision

The ALJ found Womack had not engaged in substantial gainful activity since her alleged disability onset date. (R. 15) She found Womack to have no medically-determinable mental impairment, and no severe impairment based on hypertension or irregular heartbeat. (R. 15, 16) She found Womack to have severe impairments consisting of extreme obesity, degenerative changes in her low back with right leg numbness, and "flat feet with arthritis in the feet and mild degenerative disease in the ankles." (R. 15-16; R. 19 ¶ 3) However the ALJ found none of these impairments met the requirements of the Listings. (*Id.*)

The ALJ found Womack's allegations "and Dr. Bernard's assessment of her residual functional capacity" were not supported by the record evidence and not credible. To support these findings, the ALJ noted Womack prepared her own meals, shopped, maintained her living quarters, did household chores, attended to her own grooming and hygiene successfully, and walked without the aid of a cane, crutch, or walker. The ALJ found conflict between Dr. Bernard's RFC assessments and Womack's testimony regarding her abilities and daily activities. The ALJ noted that in his November 18, 2002, assessment, Dr. Bernard expressly had answered questions "subjectively as most of the questions were subjective" (R. 17), and therefore the ALJ concluded his opinion was not based "on objective clinical signs and findings, but on the claimant's complaints." (*Id.*)

The ALJ found the doctor's January 16, 2002, opinion "appear[ed] to be the claimant's opinions and not those of Dr. Bernard." (R. 17-18)

The ALJ further rejected Dr. Bernard's opinions on the basis that they were presented on checklist-type forms, and the doctor did not "articulate an objective medical basis for the extreme limitations that the claimant has alleged and do not correspond to the physician's ongoing treatment notes." (R. 18) Thus, the ALJ gave only minimal weight to Dr. Bernard's opinions, and "little weight or credence" to Womack's allegations regarding her limitations. (*Id.*)

The ALJ further gave no weight to Womack's contention that she can sit for only ten to fifteen minutes before having to change position. The ALJ noted Womack sat for forty-five minutes during the hearing before she had to get up or move about. She also noted Dr. Morton's observation that Womack "did not appear to have any difficulty with prolonged sitting when he examined her." (*Id.*) The ALJ found "no objective basis in the record for any assertion that [Womack] is greatly limited in her ability to sit or that she would miss work with the frequency indicated in [her] attorney's [question to the VE]." (*Id.*)

Based on the VE's testimony and the ALJ's evaluation of the evidence, she determined that Womack had the following residual functional capacity:

> [T]he claimant can lift up to 10 pounds frequently and 20 pounds occasionally; stand and walk with normal breaks for a total of at least two hours during a normal eight-hour day; and sit throughout a normal eight-hour workday, again with appropriate breaks. She has no difficult with pushing or pulling. She can climb ramps and stairs occasionally. She can balance, stoop, kneel, crouch and crawl occasionally. She has no manipulative, communicative, sensory or environmental limitations. Finally, she does not have mental limitations

> interfering with her ability to function independently, appropriately and effectively on a sustained basis.

(R. 18-19) Based on the VE's testimony, the ALJ concluded that with the above limitations, Womack "would still be capable of her past relevant work as a companion, general clerk, hairstylist, activity director and volunteer supervisor." (R. 19)

Because the ALJ concluded Womack had failed to show she could not perform her past relevant work, she found Womack could not be found to be disabled under either Title II or Title XVI. (*Id.*)

III. DISABILITY DETERMINATIONS, THE BURDEN OF PROOF, AND THE SUBSTANTIAL EVIDENCE STANDARD

A. Disability Determinations and the Burden of Proof

Section 423(d) of the Social Security Act defines a disability as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months." 42 U.S.C. § 423(d)(1)(A); 20 C.F.R. § 404.1505. A claimant has a disability when the claimant is "not only unable to do his previous work but cannot, considering his age, education and work experience, engage in any other kind of substantial gainful work which exists . . . in significant numbers either in the region where such individual lives or in several regions of the country." 42 U.S.C. § 432(d)(2)(A).

To determine whether a claimant has a disability within the meaning of the Social Security Act, the Commissioner follows a five-step sequential evaluation process outlined in the regulations. 20 C.F.R. §§ 404.1520 & 416.920; *Dixon v. Barnhart*, 353 F.3d 602, 605 (8th Cir. 2003); *Kelley v. Callahan*, 133 F.3d 583, 587-88 (8th Cir. 1998) (citing

Ingram v. Chater, 107 F.3d 598, 600 (8th Cir. 1997)). First, the Commissioner will consider a claimant's work activity. If the claimant is engaged in substantial gainful activity, then the claimant is not disabled. 20 C.F.R. § 404.1520(4)(I).

Second, if the claimant is not engaged in substantial gainful activity, the Commissioner looks to see "whether the claimant has a severe impairment that significantly limits the claimant's physical or mental ability to perform basic work activities." *Dixon*, 353 F.3d at 605; *accord Lewis v. Barnhart*, 353 F.3d 642, 645 (8th Cir. 2003). The United States Supreme Court has explained:

> The ability to do basic work activities is defined as "the abilities and aptitudes necessary to do most jobs." . . . Such abilities and aptitudes include "[p]hysical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling"; "[c]apacities for seeing, hearing, and speaking"; "[u]nderstanding, carrying out and remembering simple instructions"; "[u]se of judgment"; "[r]esponding appropriately to supervision, co-workers, and usual work situations"; and "[d]ealing with changes in a routine work setting."

Bowen v. Yuckert, 482 U.S. 137, 140-42, 107 S. Ct. 2287, 2291, 96 L. Ed. 2d 119 (1987) (citing 20 C.F.R. §§ 404.1521(b), 416.921(b)).

Third, if the claimant has a severe impairment, then the Commissioner will consider the medical severity of the impairment. If the impairment meets or equals one of the presumptively disabling impairments listed in the regulations, then the claimant is considered disabled, regardless of age, education, or work experience. 20 C.F.R. § 404.1520; *Kelley*, 133 F.3d at 588.

Fourth, if the claimant's impairment is severe, but it does not meet or equal one of the presumptively disabling impairments, then the Commissioner will assess the claimant's residual functional capacity ("RFC") to determine the claimant's "ability to meet the

physical, mental, sensory, and other requirements" of the claimant's past relevant work. 20 C.F.R. §§ 404.1520(4)(iv); 404.1545(4); *see Lewis*, 353 F.3d at 645-46 ("RFC is a medical question defined wholly in terms of the claimant's physical ability to perform exertional tasks or, in other words, 'what the claimant can still do' despite his or her physical or mental limitations.") (citing *Bradshaw v. Heckler*, 810 F.2d 786, 790 (8th Cir. 1987); 20 C.F.R. § 404.1520(e) (1986)); *Dixon*, *supra*. The claimant is responsible for providing evidence the Commissioner will use to make a finding as to the claimant's RFC, but the Commissioner is responsible for developing the claimant's "complete medical history, including arranging for a consultative examination(s) if necessary, and making every reasonable effort to help [the claimant] get medical reports from [the claimant's] own medical sources." 20 C.F.R. § 404.1545(3). The Commissioner also will consider certain non-medical evidence and other evidence listed in the regulations. *See id.* If a claimant retains the RFC to perform past relevant work, then the claimant is not disabled. 20 C.F.R. § 404.1520(4)(iv).

Fifth, if the claimant's RFC as determined in step four will not allow the claimant to perform past relevant work, then the burden shifts to the Commissioner "to prove that there is other work that [the claimant] can do, given [the claimant's] RFC [as determined at step four], age, education, and work experience." Clarification of Rules Involving Residual Functional Capacity Assessments, etc., 68 Fed. Reg. 51,153, 51,155 (Aug. 26, 2003). The Commissioner must prove not only that the claimant's RFC will allow the claimant to make an adjustment to other work, but also that the other work exists in significant numbers in the national economy. *Id.*; 20 C.F.R. § 404.1520(4)(v); *Dixon, supra*; *Pearsall v. Massanari*, 274 F.3d 1211, 1217 (8th Cir. 2001) ("[I]f the claimant cannot perform the past work, the burden then shifts to the Commissioner to prove that there are other jobs in the national economy that the claimant can perform.") (citing *Cox*

v. Apfel, 160 F.3d 1203, 1206 (8th Cir. 1998)); *Nevland v. Apfel*, 204 F.3d 853, 857 (8th Cir. 2000). If the claimant can make an adjustment to other work that exists in significant numbers in the national economy, then the Commissioner will find the claimant is not disabled. If the claimant cannot make an adjustment to other work, then the Commissioner will find the claimant is disabled. 20 C.F.R. § 404.1520(r)(v).

B. The Substantial Evidence Standard

The court reviews an ALJ's decision to determine whether the ALJ applied the correct legal standards, and whether the factual findings are supported by substantial evidence on the record as a whole. *Hensley v. Barnhart*, 352 F.3d 353, 355 (8th Cir. 2003); *Banks v. Massanari*, 258 F.3d 820, 823 (8th Cir. 2001) (citing *Lowe v. Apfel*, 226 F.3d 969, 971 (8th Cir. 2000)); *Berger v. Apfel*, 200 F.3d 1157, 1161 (8th Cir. 2000) (citing 42 U.S.C. § 405(g); *Richardson v. Perales*, 402 U.S. 389, 401, 91 S. Ct. 1420, 28 L. Ed. 2d 842 (1971)). This review is deferential; the court must affirm the ALJ's factual findings if they are supported by substantial evidence on the record as a whole. *Id.* (citing *Estes v. Barnhart*, 275 F.3d 722, 724 (8th Cir. 2002); *Krogmeier v. Barnhart*, 294 F.3d 1019, 1022 (8th Cir. 2002) (citing *Prosch v. Apfel*, 201 F.3d 1010, 1012 (8th Cir. 2000)); *Kelley v. Callahan*, 133 F.3d 583, 587 (8th Cir. 1998) (citing *Matthews v. Bowen*, 879 F.2d 422, 423-24 (8th Cir. 1989)); 42 U.S.C. § 405(g) ("The findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive. . . ."). Under this standard, "[s]ubstantial evidence is less than a preponderance but is enough that a reasonable mind would find it adequate to support the Commissioner's conclusion." *Krogmeier, id.*; *Weiler v. Apfel*, 179 F.3d 1107, 1109 (8th Cir. 1999) (citing *Pierce v. Apfel*, 173 F.3d 704, 706 (8th Cir. 1999)); *accord Gowell v. Apfel*, 242 F.3d 793, 796 (8th Cir. 2001) (citing *Craig v. Apfel*, 212 F.3d 433, 436 (8th

Cir. 2000)); *Hutton v. Apfel*, 175 F.3d 651, 654 (8th Cir. 1999); *Woolf v. Shalala*, 3 F.3d 1210, 1213 (8th Cir. 1993).

Moreover, substantial evidence "on the record as a whole" requires consideration of the record in its entirety, taking into account both "evidence that detracts from the Commissioner's decision as well as evidence that supports it." *Krogmeier*, 294 F.3d at 1022 (citing *Craig*, 212 F.3d at 436); *Willcuts v. Apfel*, 143 F.3d 1134, 1136 (8th Cir. 1998) (quoting *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 488, 71 S. Ct. 456, 464, 95 L. Ed. 456 (1951)); *Gowell*, 242 F.3d at 796*; Hutton*, 175 F.3d at 654 (citing *Woolf*, 3 F.3d at 1213); *Kelley*, 133 F.3d at 587 (citing *Cline v. Sullivan*, 939 F.2d 560, 564 (8th Cir. 1991)). The court must "search the record for evidence contradicting the [Commissioner's] decision and give that evidence appropriate weight when determining whether the overall evidence in support is substantial." *Baldwin v. Barnhart*, 349 F.3d 549, 555 (8th Cir. 2003) (also citing *Cline*, *supra*).

In evaluating the evidence in an appeal of a denial of benefits, the court must apply a balancing test to assess any contradictory evidence. *Sobania v. Secretary of Health & Human Serv.*, 879 F.2d 441, 444 (8th Cir. 1989) (citing *Steadman v. S.E.C.*, 450 U.S. 91, 99, 101 S. Ct. 999, 1006, 67 L. Ed. 2d 69 (1981)). The court, however, does not "reweigh the evidence presented to the ALJ," *Baldwin*, 349 F.3d at 555 (citing *Bates v. Chater*, 54 F.3d 529, 532 (8th Cir. 1995)), or "review the factual record *de novo*." *Roe v. Chater*, 92 F.3d 672, 675 (8th Cir. 1996) (citing *Naber v. Shalala*, 22 F.3d 186, 188 (8th Cir. 1994)). Instead, if, after reviewing the evidence, the court finds it "possible to draw two inconsistent positions from the evidence and one of those positions represents the agency's findings, [the court] must affirm the [Commissioner's] decision." *Id.* (quoting *Robinson v. Sullivan*, 956 F.2d 836, 838 (8th Cir. 1992), and citing *Cruse v. Bowen*, 867 F.2d 1183, 1184 (8th Cir. 1989)); *accord Baldwin*, 349 F.3d at 555; *Young v. Apfel*, 221

F.3d 1065, 1068 (8th Cir. 2000). This is true even in cases where the court "might have weighed the evidence differently." *Culbertson v. Shalala*, 30 F.3d 934, 939 (8th Cir. 1994) (citing *Browning v. Sullivan*, 958 F.2d 817, 822 (8th Cir. 1992)); *accord Krogmeier,* 294 F.3d at 1022 (citing *Woolf*, 3 F.3d at 1213). The court may not reverse the Commissioner's decision "merely because substantial evidence would have supported an opposite decision." *Baldwin*, 349 F.3d at 555 (citing *Grebenick v. Chater*, 121 F.3d 1193, 1198 (8th Cir. 1997)); *Young*, 221 F.3d at 1068; *see Pearsall*, 274 F.3d at 1217; *Gowell*, 242 F.3d at 796; *Spradling v. Chater*, 126 F.3d 1072, 1074 (8th Cir. 1997).

On the issue of an ALJ's determination that a claimant's subjective complaints lack credibility, the Sixth and Seventh Circuits have held an ALJ's credibility determinations are entitled to considerable weight. *See, e.g., Young v. Secretary of H.H.S.,* 957 F.2d 386, 392 (7th Cir. 1992) (citing *Cheshier v. Bowen,* 831 F.2d 687, 690 (7th Cir. 1987)); *Gooch v. Secretary of H.H.S.,* 833 F.2d 589, 592 (6th Cir. 1987), *cert. denied*, 484 U.S. 1075, 108 S. Ct. 1050, 98 L. Ed. 2d. 1012 (1988); *Hardaway v. Secretary of H.H.S.,* 823 F.2d 922, 928 (6th Cir. 1987). Nonetheless, in the Eighth Circuit, an ALJ may not discredit a claimant's subjective allegations of pain, discomfort or other disabling limitations simply because there is a lack of objective evidence; instead, the ALJ may only discredit subjective complaints if they are inconsistent with the record as a whole. *See Hinchey v. Shalala,* 29 F.3d 428, 432 (8th Cir. 1994); *see also Bishop v. Sullivan,* 900 F.2d 1259, 1262 (8th Cir. 1990) (citing *Polaski v. Heckler,* 739 F.2d 1320, 1322 (8th Cir. 1984)). As the court explained in *Polaski v. Heckler:*

> The adjudicator must give full consideration to all of the evidence presented relating to subjective complaints, including the claimant's prior work record, and observations by third parties and treating and examining physicians relating to such matters as:

1) the claimant's daily activities;
2) the duration, frequency and intensity of the pain;
3) precipitating and aggravating factors;
4) dosage, effectiveness and side effects of medication;
5) functional restrictions.

Polaski, 739 F.2d 1320, 1322 (8th Cir. 1984). *Accord Ramirez v. Barnhart*, 292 F.3d 576, 580-81 (8th Cir. 2002).

IV. ANALYSIS

Womack argues the ALJ failed to substantiate her RFC determination as required by law. She argues the ALJ was required to articulate Womack's limitations specifically, and to discuss how those limitations affect her RFC. Womack claims the ALJ failed to explain why she rejected the opinions of Drs. Bernard and Tindall, and failed to point to other evidence of record upon which her RFC determination was based. (Doc. No. 8)

Womack also argues the ALJ failed to evaluate her subjective complaints properly pursuant to *Polaski*. She asserts that the Social Security Administration's own medical consultant, Dr. Latella, found her to have limitations in excess of those contained in the ALJ's RFC, which findings are consistent with her subjective complaints. (*Id.*)

Womack argues further that the ALJ improperly relied on the VE's opinion because the ALJ's hypothetical question upon which the VE's opinion was based did not contain all of Womack's limitations. (*Id.*)

The Commissioner responds that the ALJ properly documented her RFC finding. The Commissioner notes an RFC determination is drawn from the overall record evidence, including the claimant's subjective complaints, and because the ALJ found Womack's subjective complaints lacked credibility, she therefore did not include Womack's claimed

limitations in assessing her RFC. Instead, the ALJ included those limitations she found to be credible, relying on the findings of Dr. Morton and the state agency physicians. (Doc. No. 9)

The Commissioner argues the ALJ's credibility assessment was proper under *Polaski*, including an assessment of Womack's daily activities, the effects of medications, Womack's work record, the objective medical evidence, and the ALJ's own observations of Womack during the hearing, specifically the fact that Womack was able to sit for forty-five minutes before she had to change positions. (*Id.*)

Womack responds that the ALJ failed to take into consideration her extreme obesity and its effect on her daily activities and functional restrictions. She again points out that the ALJ's RFC determination differed from the functional limitations found by Drs. Latella, Bernard, and Tindall. She argues that when limitations consistent with those doctors' opinions were presented to the VE, the VE stated the hypothetical individual could neither return to past relevant work nor perform any work on a competitive basis. (Doc. No. 10)

The court finds the record does not contain substantial evidence to support the ALJ's conclusion that Womack retains the residual functional capacity to return to any of her past relevant work. The ALJ failed to substantiate her RFC assessment adequately, and failed to provide satisfactory justification for rejecting the opinions of Drs. Bernard, Latella, and Tindall.

The ALJ also failed to account properly for Womack's obesity in assessing Womack's RFC and her limitations. As the Social Security Administration has recognized, "The combined effects of obesity with other impairments may be greater than might be expected without obesity. For example, someone with obesity and arthritis affecting a weight-bearing joint may have more pain and limitation than might be expected from the

arthritis alone." SSR 02-1p, Question 8. Although obesity is not, itself, a listed impairment, the SSA has "instruct[ed] adjudicators to consider the effects of obesity not only under the listings but also when assessing a claim at other steps of the sequential evaluation process, including when assessing an individual's residual functional capacity." SSR 02-1p, Intro.

The court finds that after finding Womack's obesity to be a severe impairment, the ALJ then failed to take Womack's obesity into account in assessing Womack's RFC, and in evaluating the credibility of Womack's subjective complaints. As a result, the court finds the ALJ erred in stopping her analysis at step four of the sequential evaluation process.

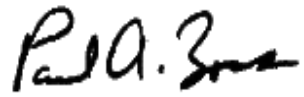
On the other hand, the court does not find substantial evidence on this record to make a determination that Womack would be unable to perform other jobs available in the economy. The court therefore finds it would be appropriate to remand this case for further consideration. Upon remand, the ALJ should be directed to take Womack's extreme obesity into account in her analysis of Womack's credibility and her RFC assessment. New vocational evidence should be acquired, utilizing a revised RFC that takes Womack's total condition into account, to determine whether she would be able to perform competitive work on a full-time basis.

V. CONCLUSION

For the reasons discussed above, **IT IS RESPECTFULLY RECOMMENDED**, unless any party files objections[1] to the Report and Recommendation in accordance with 28 U.S.C. § 636 (b)(1)(C) and Fed. R. Civ. P. 72(b), within ten (10) days of the service of a copy of this Report and Recommendation, that the Commissioner's decision be reversed and this case be remanded for further consideration consistent with the above analysis.

IT IS SO ORDERED.

DATED this 22nd day of December, 2004.



PAUL A. ZOSS
MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT

[1]Objections must specify the parts of the report and recommendation to which objections are made. Objections must specify the parts of the record, including exhibits and transcript lines, which form the basis for such objections. *See* Fed. R. Civ. P. 72. Failure to file timely objections may result in waiver of the right to appeal questions of fact. *See Thomas v. Arn*, 474 U.S. 140, 155, 106 S. Ct. 466, 475, 88 L. Ed. 2d 435 (1985); *Thompson v. Nix*, 897 F.2d 356 (8th Cir. 1990).